REMARKS

Claims 11-19, 23-33 are now in the application. In the Office Action mailed May 18, 2007 the Examiner suggested a change to the language of the abstract and objected to the drawings with regard to lack of reference to elements 90 and 92 in Figure 5. Appropriate correction is made to the Abstract and to paragraph 24 of the Specification to fully address the Examiner's comments. No revisions to the drawings are required. Various revisions of an apparent nature have been made to the examined claims.

Claims 11, 28 and 29 were rejected under Section 112 (although applicant believes the Examiner intended to reject claims 11, 29 and 30) and all of the claims were rejected under Section 102 based on the Modesto reference (U.S. 2003/0056012). Applicants respectfully traverse these rejections for the reasons now presented.

REJECTIONS UNDER SECTION 112

The claims were rejected under Section 112 for reciting language which the Examiner considered vague or indefinite due to lack of clarity. However, based on the following citations from the Specification, it is submitted that the subject phrase "real-time communication level of a real-time Ethernet" does satisfy the requirements of Section 112 and the rejection should be withdrawn. First, see paragraph 24 at page 12 which states,

"Certain automation tasks require real-time-capable communication (fast, equidistant, deterministic; see above) of a kind which the internet protocols and also standard Ethernet cannot provide. **The problem of protocols that from this point of view are not always sufficiently powerful is resolved in that access to the underlying real-time Ethernet protocol stack is enabled for the automation modules 72, 83 of the web server 70, 71. Proprietary, high-speed, real-time communication can take place via this route.** This is of course relevant in particular in LAN environments (LAN = Local Area Network). The real-time requirements of the automation module 72, 83 are handled by means of this access. Administrative tasks such as configuration, diagnostics, etc. or also "surfing the web" (meaning normal internet access) are handled via the non-real-time part of the web server 70, 71 [Emphasis Added]."

Next, see paragraphs 25 and 26 at pages 12 and 13, excerpts from which now follow:

"To provide clarification, the basic principles of the ISO/OSI reference model referred to in the description and of the TCP/IP protocol are explained below ... [A] basic reference model, known as the Open Systems Interconnect (OSI) reference model, creates a frame of reference for dealing with issues arising from the field of data communication. The ISO basic reference model consists of seven layers. Each of these layers defines certain functions of the data communication protocols which are executed during the exchange of data between applications over an intermediate network. Each individual layer does not define a protocol but rather represents a data communication function which can be executed by any number of protocols. Each layer can contain a plurality of protocols, each of which provides such services as are required for fulfilling the function of said layer. The following model results:

The bottom, first, layer defines the physical characteristics ... **The fourth layer, called the transport layer, ensures error-free data transmission** by means of error detection and correction ... The sixth layer, the presentation layer, standardizes the format of the data on the network. Finally, the highest and seventh layer, the application layer, consists of the applications by means of which the network can be used [Emphasis Added].

See, also, paragraph 22 at page 11 which states, with reference to Figure 4:

"**The automation module 72** integrated into the web server additionally **has direct access** by means of the connection 75 **to the real-time communication level of the real-time Ethernet. The automation module 72 is therefore extended to include access to the real-time communication level of the real-time Ethernet.** This is **generally the underlying real-time Ethernet TCP/IP stack in the fourth layer** (also referred to as "Layer 4") of the ISO/OSI model described below. A **real-time Ethernet connection** 78 between the TCP/IP stack 77 of the web server 70 and the TCP/IP stack 79 of a further web server 71 **is used for communication by means of a TCP/IP-based real-time Ethernet protocol** [Emphasis Added]."

See, also, paragraph 23 at page 11 which states, with reference to Figure 5:

"The **automation module 72** integrated into the web server additionally **has direct access** by means of the connection 75 **to the real-time communication level of the real-time Ethernet.** A real-time Ethernet connection 78 between the TCP/IP stack 77 of the web server 70 and the TCP/IP stack 91 of an automation device 93 is used **for communication by means of a TCP/IP-based real-time Ethernet protocol** [Emphasis Added]."

Based on the above citations, it is submitted that the subject language "real-time communication level of a real-time Ethernet" does satisfy the requirements of Section 112 and the rejection should be withdrawn. The above-citations also provide support for claims 31-33, which have been added to the application to further distinguish over the art of record.

If the Examiner would like any further information regarding the ISO/OSI reference model referred to in the description and of the TCP/IP protocol, or communication by means of a TCP/IP-based real-time Ethernet protocol, the applicants will readily provide such upon request.

REJECTIONS UNDER SECTION 102

All of the claims were rejected under Section 102 based on Modeste et al. (US 2003/0056012). At the outset, it is noted that the Examiner has also examined applicants' U.S. Ser. No. 10/510,312 (Attorney Docket No. 2002P03970WOUS) and the independent claims in that application, while directed to different subject matter than that defined in the present application, were rejected on a very similar or identical basis. Applicants have been forced to appeal the final rejections in that application on the same basis that the art rejection in the present application is now traversed. That is, as applicants have repeatedly urged that Figure 1 of the Modeste reference is inconsistent with the claimed invention in Ser. No. 10/510,312 (because it expressly shows an automation controller 60 separate and distinct from the gateway 30) so, too, for the same reason, the Modeste reference is inconsistent with the claimed invention in the present application. In the advisory action (mailed 09/28/2007) in Ser. No. 10/510,312, the Examiner did acknowledge applicants' contention that a controller connected to a gateway 30 does not make that controller part of a server. As best understood, the Examiner's response to this distinction is that, because the applicants have claimed a web server comprising software modules with a first mechanism for implementing an automation functionality, it is somehow permissible to conclude that Modeste discloses applicant's claimed software module (having the mechanism for implementing software functionality) as though it were in Modeste's gaeway 30. The apparent reasoning for taking this liberty is, as stated in the advisory action (mailed 09/28/2007) in Ser. No. 10/510,312, that

> "Modeste teaches Gateway conncted [sic] with controller that provided automation functionality."

Not only does this require an impermissible modification of a reference being applied under Section 102, but further, the very statement made by the Examiner admits that Modeste requires a controller, separate and apart from a gateway to provide an automation functionality.

That is, the Examiner has admitted that the reference is different. Applicants are not claiming

two distinct and well-known components. Rather, applicants are claiming a web server with two

functionalities via one or more software modules providing:

"a first mechanism for implementing an automation functionality and a second mechanism to
directly access the real-time communication level of a real-time Ethernet." [See claim 11.]

As already admitted by the Examiner in the advisory action (mailed 09/28/2007) in Ser.

No. 10/510,312, this is **not the same** as what the Examiner says that Modeste discloses: "two

distinct and well-known components."

With this difference acknowledged by the Examiner, it is not understood how the

Examiner can make a rejection under Section 102. Nor can a rejection be made under Section

103.

As stated at par. [0036] of the Modeste reference the "gateway 30 is coupled over an

RS232 data link to a home automation controller 60 ... [and] devices 70, 80 and 90 are coupled

to the controller ..." This is clearly different from applicants' arrangement wherein the claimed

"automation functionality" is **within a software module** of the web server instead of being, for

example, in a separate controller that is connected to a gateway 30 via an RS232 interface. This

is not a matter of the Examiner having merely drawn an incorrect inference about the Modeste

reference.

Rather, the Examiner is contradicting the Modeste reference by reconstructing it as

though the C-Automation Controller (element 60), together with the gateway 30, form a web

server. This cannot be because the element 60 is not part of the gateway 30, but is merely

connected via a RS232 interface. Automation functionality is not in the gateway 30. The

Modeste reference does not teach or suggest automation functionality within the gateway 30 and

the Examiner appears cognizant of such, as the Examiner's characterization of Modeste is that

the element 60 and the gateway 30 must be combined to meet the requirements of the claims.

That is, in the present application, to meet the terms of claim 11 (which requires a web

server with a first software module having the first mechanism for implementing the automation

functionality) the Examiner has impermissibly combined the two discrete components to merge

the "automation functionality" present in the element 60 within a web server (the gateway 30) to "form" a **different** kind of web server than disclosed by Modeste.

In doing so, the Examiner has ignored the claim language requiring that the first and second mechanisms are part of the server software. It is only the applicants who teach **server software** having a first mechanism for implementing an "automation functionality" and a second mechanism to "directly access the real-time communication level of a real-time Ethernet." Clearly with the automation functionality resident in the element 60 of Modeste, it is not possible to provide the claimed first and second mechanisms in the server software.

In comparison to the claimed invention, the element 30 of Figures 1 and 2A is no more than a "gateway" between a website server 20 and a controller which may contain the automation functionality needed to operate the devices 70, 80 and 90 in a user's home. See paragraphs [0034] and [0036] of Modeste.

In summary, the Examiner has carried forth the same misinterpretation of the Modeste reference from the copending application to improperly reject the claims of this application. The Examiner has also misinterpreted the claimed subject matter in order to read the claims on the prior art. The invention is set forth in three independent claims, 11, 29 and 30, all of which enable a web server to provide "a first mechanism for implementing an automation functionality." It is respectfully submitted that at least this recited feature fully distinguishes over the prior art.
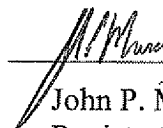
Conclusion

The rejection under Section 112 should be removed based on the support cited in the specification which shows that the claim language is not vague or indefinite. With respect to the Modeste reference, it is respectfully submitted that the Examiner's own arguments confirm that the basis for the art rejection fails to comply with the express requirements set forth under Section 102. MPEP §2131 provides that a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. The identical invention must be shown in as complete detail as contained in the claim. Specifically, in order to so reject the independent claims, it is necessary to identify in one prior art reference all of the features as they are expressly claimed by the applicants. Accordingly, applicants have rightfully traversed the art rejections on the basis that the rejection of each

independent claim under 35 USC 102(b) is in error. The cited prior art Modeste reference to fails to disclose each and every element as set forth in the independent claim 10. The combinations presented in the dependent claims further distinguish over the prior art.

Based on the foregoing distinctions it is submitted that the rejection is in error and the claims are neither anticipated by nor obvious in view of such. The Commissioner is hereby authorized to charge any appropriate fees due in connection with this paper, including the fees specified in 37 C.F.R. §§ 1.16 (c), 1.17(a)(1) and 1.20(d), or credit any overpayments to Deposit Account No. 19-2179.

Respectfully submitted,

Dated: _____11/15/07_____   By: _____

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